IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Crl.Rev.Pet.No. 2742 of 2007()

CRA.317/2006 of SESSIONS COURT, THRISSUR
CC.103/2005 of SESSIONS COURT, THRISSUR

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REVN. PETITIONER: REVN. PETITIONER/APPELLANT/ACCUSED NO.1

CHANDRAN, AGED 37 YEARS, S/O. MADASWAMY,
DOOR NO.II/415, THIDEER NAGAR, MADURAI,
TAMIL NADU.

BY ADV. SRI.E.C.POULOSE
SMT.BOBBY RAPHEAL.C

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, IRINJALAKUDA POLICE
STATION, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2742 OF 2007

Dated this the 25th day of July, 2007

O R D E R

The revision petitioner, who was the first accused in C.C.No.103/2005 on the file of the JFCM, Irinjalakuda for offences punishable under sections 457 and 380 IPC, challenges the conviction entered and the sentence passed against him concurrently by the courts below.

2. The case of the prosecution is that at about 11.30 p.m. on 14.10.2004 accused Nos.1 and 2 in furtherance of their common intention to commit theft entered into the hostel building run by CW3 and bearing No.VIII/359 of Irinjalakuda municipality and dishonestly removed the gold chain worn by PW2, Ramani Bhai, while she was sleeping in the eastern bedroom of that building by thrusting his hand through the window.

3. On both the accused pleading not guilty to the charge framed against them by the trial court for the aforementioned offences, the prosecution altogether examined seven witnesses as PWs 1 to 7 and got marked three documents as Exhibits P1 to P3 and a gold ingot as MO1.

4. Both the accused denied the incriminating circumstances in the evidence for the prosecution and maintained their innocence during their examination under section 313(1)(b) Cr.P.C.

5. When called upon to enter on his defence, the accused did not adduce any defence evidence. The learned Magistrate, after trial, as per judgment dated 27.3.2006, acquitted the 2nd accused but convicted the revision petitioner/the first accused for the aforesaid offences and sentenced him to undergo rigorous imprisonment for 2½ years for each of the aforementioned offences. An appeal preferred by the revision petitioner before the Sessions Court, Thrissur, as Criminal Appeal No.317/2006 was dismissed confirming the conviction entered and the sentence passed against him. Hence this revision.

6. The learned counsel appearing for the revision petitioner made the following submissions before me in support of the revision:-

PW2, who allegedly lost the gold chain, had not even lodged a complaint before the police. She did not reveal the model of her gold chain. The iron rod which was allegedly found in the

possession of the revision petitioner at the time of his arrest has not been produced as a material object in the case. The conviction entered and the sentence passed against the revision petitioner are, therefore, unsustainable.

7. I am afraid that I cannot agree with the above submissions. It is true that PW2 did not lodge any complaint before the police for the loss of her gold chain. But that does not mean that the prosecution evidence is suspect. It is common knowledge that very often people do not take the trouble of going to the police station to report an incident of theft presumably knowing the agony involved. It has been judicially noticed through various pronouncements that failure to lodge a complaint in a theft case does not improbabilise the prosecution case if the evidence of the prosecution is otherwise credible and acceptable.

8. The building in question is a hostel where PW2 was an inmate. The occurrence took place at about 11.30 p.m. on 14.10.2004 when an unidentifiable person had thrust his hand through the window and snatched the gold chain worn by PW2, who was sleeping there. Subsequently, PW6, who was the Sub Inspector of police, Irinjalakuda, stumbled upon the first accused

on 17.12.2004. On interrogation, the revision petitioner gave Ext.P1 confession which took the police to Karunalayam jewellery at Alapuzha owned by PW3. The accused had led the police to the said jewellery from where the police recovered MO1 ingot as per Ext.P1 recovery mahazar. When questioned, PW3, the jewellery owner, stated that he had purchased a gold chain from the revision petitioner for Rs.6,000/- (Rupees six thousand only) and he had melted the same and MO1 is the gold ingot after the said melting.

9. The argument that PW2 has not mentioned the model of the gold chain which was stolen and PW3 from whom the gold ingot was recovered also has not disclosed the model of the gold chain which he allegedly purchased from the revision petitioner is also of no consequence when no question was put to PW3 whether he had purchased more than one gold chain from the revision petitioner.

10. The non-examination of CW3, the owner of the hostel where PW2 was allegedly sleeping on the ill fated night also cannot be of any consequence. The statement of PW2 in court that in the night of 14.10.2004 somebody had snatched her gold

chain while she was sleeping has been found to be true through the recovery of the gold ingot from PW3 according to whom the gold chain in question was purchased from the accused and PW3 had melted the same to convert into a gold ingot. The accused is not a first offender. Hence the conviction recorded and the sentence passed against the revision petitioner concurrently by the courts below do not warrant interference at the hands of this court.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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